



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No.: FAA-2010-0302; Amdt. No. 93-99]

RIN: 2120-AK84

Extension of the Requirement for Helicopters to Use the New York North Shore

Helicopter Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rulemaking amends the expiration date of the final rule requiring pilots operating civil helicopters under Visual Flight Rules to use the New York North Shore Helicopter Route when operating along that area of Long Island, New York. The current rule expires on August 6, 2016. The FAA finds it necessary to extend the rule for an additional four years to preserve the current operating environment while the FAA conducts ongoing helicopter research that will be considered to determine appropriate future actions.

DATES: This final rule is effective August 7, 2016, through August 6, 2020.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see “How To Obtain Additional Information” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Kenneth Ready, Airspace and Rules Team, AJV-113, Federal Aviation Administration,

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SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

The FAA has broad authority and responsibility to regulate the operation of aircraft, the use of the navigable airspace and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. (49 U.S.C. 40104 et seq., 40103(b)). The FAA's authority for this rule is contained in 49 U.S.C. 40103 and 44715. Under section 40103, the Administrator of the FAA has authority to "prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for . . . (B) protecting individuals and property on the ground. (49 U.S.C. 40103(b)(2)(B)). In addition, section 44715(a), provides that to "relieve and protect the public health and welfare from aircraft noise," the Administrator of the FAA, "as he deems necessary, shall prescribe . . . (ii) regulations to control and abate aircraft noise . . ."

Good Cause for Immediate Adoption Without Prior Notice

Section 553(d)(3) of the Administrative Procedure Act requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule. The current rule expires on August 6, 2016. To prevent confusion among pilots using the route and avoid disruption of the current operating environment, the FAA finds that good cause exists to make this rule effective in less than 30 days.

I. Background

In response to concerns from a large number of local residents regarding noise from helicopters operating over Long Island, the FAA issued the New York North Shore Helicopter Route final rule (77 FR 39911, July 6, 2012). The rule requires civil helicopter pilots operating Visual Flight Rules (VFR), whose route of flight takes them over the north shore of Long Island between the Visual Point Lloyd Harbor (VPLYD) waypoint and Orient Point (VPOLT), to use the North Shore Helicopter Route, as published in the New York Helicopter Chart (“the Chart”). The rule was promulgated to maximize use of the route, as published per the Chart, to secure and improve upon decreased levels of noise that had been voluntarily achieved. Under the rule, pilots are permitted to deviate from the route and altitude requirements when necessary for safety, weather conditions, or transitioning to or from a destination or point of landing. In addition, the rule is based on a voluntary VFR route that was developed by the FAA, working with the Eastern Region Helicopter Council. The voluntary route originally was added to the Chart on May 8, 2008.

The rule originally had a two-year duration and was set to terminate on August 6, 2014. The FAA limited the duration of the rule because, at the time of promulgation, the FAA did not have data on the current rate of compliance with the voluntary route nor the circumstances surrounding an operator’s decision not to use the route. The FAA concluded there would be no reason to retain the rule if the FAA determined the noise situation along the North Shore of Long Island did not improve. Accordingly, the Agency decided that the rule would expire in two years, if it was determined there is no meaningful improvement in the effects of helicopter noise on quality of life or that the rule was otherwise unjustified. Specifically, the FAA stated that should there be such an improvement, the FAA may, after appropriate notice and opportunity for

comment, decide to make the rule permanent. Likewise, should the FAA determine that reasonable modification could be made to the route to better address noise concerns (and any other relevant concerns), the FAA may choose to modify the rule after notice and comment.

On June 23, 2014, the FAA issued a two-year extension of the rule's termination date to provide additional time for the Agency to assess the rule's impact and consider whether to make the mandatory use of the route permanent (79 FR 35488). Since then, the FAA has been engaged in a variety of helicopter research initiatives that could inform the Agency's future actions on this rule. Topics addressed by these research efforts, described in more detail below, include modeling of helicopter performance and noise, helicopter noise-abatement procedures, and community response to helicopter noise.

The FAA has initiated efforts to improve helicopter performance-modeling capabilities for more accurate operational impact analysis. This research is scheduled to be completed in 2016, with an implementation plan for incorporation into the FAA's Aviation Environmental Design Tool (AEDT).¹ Also, through the National Academies of Science, Engineering, and Medicine Transportation Review Board (TRB), a research project was initiated through the Airport Cooperative Research Program (ACRP) to provide helicopter noise-modeling guidance. The project reviewed, evaluated, and documented current helicopter noise prediction models and identified potential improvements to AEDT to better capture the unique complexity of helicopter operations. The research was published in January 2016. The FAA is currently reviewing the findings and will consider making modeling improvements in AEDT based on those findings.

¹ AEDT is the FAA's tool for computing noise, emissions and fuel burn.

Improved modeling will allow better quantification of the noise impacts of helicopter operations and better inform decisions on measures to abate helicopter-noise impacts.

The FAA's Center of Excellence, called the Aviation Sustainability Center (ASCENT), has funded Pennsylvania State University to conduct modeling of helicopters to identify potential noise-abatement procedures that may result in quieter operations. The first phase of this project focuses on integrating the tools needed to predict helicopter-source noise and providing the necessary integration within AEDT to be able to illustrate potential noise impacts of such noise abatement procedures. The second phase of the project is focused on developing noise-abatement procedures for either individual helicopters or classes of helicopters. These phases of the research are scheduled to be completed by August 2017. At that time, the FAA will need to determine whether to initiate and support flight tests during 2018, which would be necessary prior to advancing the use of the procedures with helicopter operators.

The FAA is also engaged in research and collaboration with helicopter operators, seeking to educate pilots on the benefits of noise-abatement procedures, when to institute them, and the piloting procedures for achieving quieter operations. This project addresses noted issues by developing a strategy for pilot awareness of noise-abatement techniques, looking at ways to illustrate the benefits through modeling, and examining the potential for video training on how to incorporate noise-abatement procedures. This research will utilize the findings of the ASCENT project described above.

Finally, the FAA has two projects to review methodologies to determine community response to helicopter operations. One project is administered through the ACRP. The objectives of the ACRP research project are to: (1) determine the significance of acoustical and non-acoustical factors that influence community annoyance to helicopter noise, (2) describe how these

factors compare to those contributing to fixed-wing aircraft community annoyance, and (3) develop and validate a research method to relate helicopter-noise exposure to surveyed community annoyance. This project is two-thirds complete, and ACRP expects the project to be completed in late 2016. Further, the FAA has initiated a second project in an effort to test a different methodology for gathering information on community annoyance for residents in the vicinity of helicopter operations. The FAA has gathered data for this project, and the analysis is underway. The goal is to report on the methodology in late 2016, and when completed, it will provide an alternative method for developing an annoyance survey for helicopters.

Both of these projects provide an opportunity for the FAA to compare methodologies and determine the most effective approach for conducting a helicopter noise-annoyance survey. At the completion of the projects, the FAA intends to select the most effective, survey methodology and determine if a larger scale, community survey would better inform the FAA on appropriate methods to address concerns over helicopter noise. The FAA will then consider the need for a comprehensive helicopter community annoyance survey. While the research reaches maturity by the end of 2017, applying the research will take longer.

II. The Final Rule

This final rule extends for an additional four years (i.e., to August 6, 2020) the requirement for pilots of civil helicopters to use the North Shore Helicopter Route when transiting along the north shore of Long Island. The FAA expects that four years will be sufficient time to consider results of the described research efforts in determining appropriate future actions on the rule. Extending the requirement to use the North Shore Helicopter Route during this period will continue to foster maximum use of the North Shore Helicopter Route and avoid disruption of the

current operating environment. Therefore, the FAA finds that a four-year extension of the current rule is warranted.

III. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost

and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This final rule extends for an additional four years (i.e., to August 6, 2020) the requirement for pilots of civil helicopters to use the North Shore Helicopter Route when transiting along the north shore of Long Island. Extending the current rule for four years is expected to provide the FAA with sufficient time to consider results of the described research efforts in determining appropriate future actions on the rule. The FAA determined the 2012 final rule would impose minimal costs because many of the existing operators were already complying with the final rule requirements. As this final rule extends those requirements, the FAA expects this final rule imposes only minimal costs.

The FAA has, therefore, determined that this final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT’s Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this final rule does not have a significant economic impact on a substantial number of small entities for the following reasons. With this final rule, the regulatory provisions already in place will be extended four years to provide the FAA with sufficient time to consider results of the described research efforts in determining appropriate future actions on the rule. The final regulatory flexibility analysis for the 2012 final rule determined that it had a minimal cost impact on a substantial number of small entities. This final rule extends those requirements. Thus, the FAA expects a minimal economic impact on a substantial number of small entities.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an

unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that the rule will preserve the current operating environment and is not considered an unnecessary obstacle to foreign commerce.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and

Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” identifies FAA actions that, in the absence of extraordinary circumstances, are categorically excluded from requiring an environmental assessment (EA) or environmental impact statement (EIS) under the National Environmental Policy Act. This rule qualifies for the categorical exclusion in paragraph 5-6.6.f of that Order, which includes “[r]egulations... excluding those that if implemented may cause a significant impact on the human environment. There are no extraordinary circumstances that warrant preparation of an EA or EIS.

IV. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the

distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply,

Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

V. How To Obtain Additional Information

A. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA’s Regulations and Policies web page at

http://www.faa.gov/regulations_policies or

3. Accessing the Government Printing Office’s web page at

<http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Commenters must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this rulemaking action, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 93

Air traffic control, Airspace, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14 of the Code of Federal Regulations as follows:

PART 93—SPECIAL AIR TRAFFIC RULES

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44715, 44719, 46301.

2. Add § 93.101 to read as follows:

§93.101 Applicability.

This subpart prescribes a special air traffic rule for civil helicopters operating VFR along the North Shore, Long Island, New York, between August 6, 2012, and August 6, 2020.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington,
DC, on July 15, 2016.

Michael P. Huerta

Administrator

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